THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.19734 OF 2005

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Dt: 06.09.2005

Between:

Pathan Rahman Khan

.. Petitioner

AND

The Deputy General Manager (Vigilance)

State Bank of India, Hyderabad.

.. Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.19734 OF 2005

ORDER:

The petitioner was working as Manager in one of the branches of the State Bank of India. In the year 1983, he was removed from service as a measure of penalty. The order of removal was challenged before various authorities and Courts, and ultimately, it became final.

Petitioner filed a representation, dated 19.07.2004, before the respondent, stating that he was not furnished the copy of the report of the Enquiry Officer, and that in view of the judgment of the Supreme Court in ***ECIL v. B. KARUNAKAR,*** the case against the petitioner was liable to be reopened. The respondent replied through letter, dated 11.11.2004, stating that the ratio laid down by the Supreme Court in the said case does not apply to cases, which have already become final or at least those in which the orders of removal were passed before 20.11.1990. The petitioner challenges the same.

Heard the party-in-person and the learned Standing Counsel for the respondent.

It is a matter of record that the order of removal passed against the petitioner became final. It is true that in a decision reported in ***UNION OF INDIA v. Md. RAMZAN KHAN,*** the Supreme Court held that where the report of an Enquiry Officer is not furnished to the delinquent employee, the order imposing punishment is liable to be set aside. However, the application of that principle was ordered to be prospective, from the date of judgment i.e., 20.11.1990.

Subsequently, in ***KARUNAKAR's*** case (1 supra), it was pointed out before a Bench of five Judges that though an observation was made in ***Ramzan Khan's*** case (2 supra) to the effect that it is prospective in operation, the relief was granted in respect of the employees against whom orders were passed earlier to that date. Dealing with this contention, the Supreme Court held that grant of such a relief was *per incurium*.

The observations made in ***ECIL's*** case (1 supra) as to the reopening of the disciplinary proceedings to ensure that the reports of the enquiry officers are furnished, were in relation to the pending cases. There is nothing in the said judgment to indicate that the cases of dismissal or removal from service, which have become final, must be reopened on the ground that the report of the enquiry officer was not furnished. Therefore, the ratio laid down in ***Ramzan Khan's*** case (2 supra) does not apply to the facts of the case of the petitioner, inasmuch as the order of

removal was passed before 20.11.1990. Similarly the judgment in ***Karunakar's*** case (1 supra) does not cover this case for the reason that no proceedings are pending against the petitioner before any forum, as on today.

The other facet of that Judgment Viz., that where the service rules provide for it, furnishing of the report of the Enquiry Officer is mandatory; also does not apply to the present case. Such a ground is deemed to have been raised and rejected, in the earlier round of proceedings.

For the foregoing reasons, the writ petition is dismissed. No order as to costs.

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06.09.2005

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